

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WILLIAM NEVINS,

Plaintiff,

v.

No. CIV 03-1165 BB/ACT

RIO RANCHO PUBLIC SCHOOLS,
PRINCIPAL GARY TRIPP, and
SUPERINTENDENT SUE CLEVELAND, in
their official and individual capacities,

Defendants.

MEMORANDUM OPINION
AND
ORDER DENYING REMAND


THIS MATTER came before the Court on Plaintiff's *Motion to Remand* [#5] the case on the ground the Eleventh Amendment prohibited this Court from exercising jurisdiction. In their answer brief, Defendants noted the Rio Rancho Public Schools are not considered State entities under New Mexico law. *Duke v. Grady Mun. Sch.*, 127 F.3d 972 (10th Cir. 1997). The local school boards are therefore legal "persons" and subject to potential liability under 42 U.S.C. § 1983. So informed, "Plaintiff stands corrected and withdraws the Motion to Remand on that basis." (Pl.'s Reply at 1). "Therefore, what remains for this court to decide is simply whether it will exercise the pendent jurisdiction over the breach of contract count or remand all or part of the case back to

State Court.” (*Ibid.* p. 2). Since the constitutional issue appears to be intertwined with the violation of the right of privacy and breach of contract claim, it would appear to conserve judicial resources to resolve all these matters in one forum at the same time. *Peacock v. Thomas*, 516 U.S. 349 (1996). Jurisdiction of the State claims should be retained.

ORDER

For the above stated reasons, Plaintiff’s *Motion to Remand* is DENIED.

SO ORDERED this 23rd day of February, 2004.



BRUCE D. BLACK
United States District Judge

For Plaintiff:

Eric Sirotkin, Albuquerque, NM

For Defendants:

Jerry A. Walz, WALZ & ASSOCIATES, Cedar Crest, NM